

URBAN DEVELOPMENT AUTHORITY
v
CEYLON ENTERTAINMENTS LIMITED AND OTHERS

SUPREME COURT
BANDARANAYAKE, J.
EDUSSURIYA, J. AND
DE SILVA, J.
SC APPEAL 41/2002
C.A.REV.APPLICATION NO 1319/2001
D.C. COLOMBO NO 4795/SPL
13 AND 30 MAY 2003

Revision – Failure to file material documents – Rule 3 of the Supreme Court Rules.

The appellant who was a defendant in an action filed in the District Court of Colombo failed to answer interrogatories whereupon the District Court rejected the answer filed by the appellant.

The appellant's application to the Court of Appeal was dismissed on two grounds:

- (1) failure to set out exceptional circumstances which attracted revision; and
- (2) failure to annex to his application originals or certified copies of documents relied upon by the appellant.

Held:

- (1) The appellant failed to file in the Court of Appeal duly certified copies of material documents as required by Rules 3(b) read with Rule 3(a) of the Supreme Court Rules.
- (2) It is settled law that Rule 3 of the Supreme Court Rules must be adhered to.
- (3) In view of the above finding it is not necessary to consider the question whether it is necessary to plead specifically special circumstances which warrant the exercise of revisionary jurisdiction of the Court of Appeal.

Case referred to:

1 *Shanmugavadivu Kulathilake* (2003) 1 Sri LR 215

APPEAL from the judgment of the Court of Appeal.

Milinda Gunatilake State Counsel for appellant.

A.R.Surendran with *Arul Selvaratnam* for respondent.

Cur.adv.vult.

October 22, 2003

EDUSSURIYA, J.

This appeal has been filed from the judgment of the Court of Appeal in an application to revise an order of the District Court of Colombo rejecting the answer filed by the appellant for its failure to answer the interrogatories served on the appellant. 1

After oral submissions were made on 13th May 2003 both counsel were given two weeks to file written submissions. Although the respondent filed written submissions on 30th May 2003, the appellant has failed to file written submissions upto date.

The Court of Appeal had rejected the application to revise the said order of the District Court on the ground (1) that the petitioner (appellant) before the Court of Appeal had failed to set out any exceptional circumstances which warranted the exercise of the revisionary jurisdiction of the Court of Appeal and (2) that the petitioner had not annexed to his application for revision either the originals or certified copies of the documents relied on by the petitioner, as required by the Rules of Court. 10

Special leave to appeal from the said judgment of the Court of Appeal had been granted on the following grounds.

- 1) the said judgment is contrary to law;
- 2) the Court of Appeal has erred in law in holding that the presence of exceptional circumstances in the pleadings is by itself insufficient for the exercise of the revisionary jurisdiction of the Court of Appeal; 20

- 3) the Court of Appeal erred in law in holding that notwithstanding the presence of exceptional circumstances in the pleadings the application of the petitioner should fail due to the lack of an express averment that exceptional grounds existed;
- 4) the Court of Appeal erred in law in holding that the failure on the part of the petitioner to annex certified copies to the petition would inevitably result in the dismissal of the petitioner's application; 30
- 5) the Court of Appeal has failed to consider that the order of the learned District Judge dated 27th July 2001 was contrary to law and that exceptional circumstances existed which warranted the exercise of the revisionary power of the Court of Appeal;
- 6) the Court of Appeal failed to consider the grave prejudice and miscarriage of justice caused to the petitioner who would be deprived of appearing and defending the action even after filing answer. 40

It is settled law that Rule 3 of the Rules of Court must be adhered to. Since the petitioner had filed an application in revision, Rule 3 (1) (a) read with Rule 3(1)(b) would apply.

Rule 3(1) (a) sets out that in every application made to the Court of Appeal for the exercise of the powers vested in the Court of Appeal by Articles 140 and 141 of the Constitution the petition shall be accompanied by the originals of the documents material to such application (or duly certified copies thereof) in the form of exhibits, and where a petitioner is unable to tender any such document, he shall state the reason for such inability and seek the leave of Court to furnish such document later; where a petitioner fails to comply with the provisions of the rule the Court may, *ex mero motu* or at the instance of any party, dismiss such application. 50

Rule 3(1) (b) sets out that every application by way of revision or *restitutio in integrum* under Article 138 of the Constitution shall be made in like manner together with copies of the relevant proceedings (including pleadings and documents produced), in the court of first instance, tribunal or other institution to which such

application relates.

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Although Rule 3(1) (b) does not speak of originals or duly certified copies of the pleadings and documents to be annexed to the application in revision there can be no doubt that the words "copies of the relevant proceedings (including pleadings and documents produced)" refer to duly certified copies of the same. It must also be borne in mind that the relevant Rule requires the petitioner to file an application in revision in "like manner".

However, where an objection is taken on the ground that either the originals or duly certified copies of material documents have not been filed with the petition then the Court of Appeal must before making a ruling on such objection consider the question whether such documents are material in deciding the questions urged by the petitioner in the application for revision.

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It has been urged that the order of the District Court which the petitioner sought to have revised by the Court of Appeal resulted in a miscarriage of justice. In order to decide that question, namely whether the answers to the interrogatories were filed within the time stipulated by the District Court, it is necessary to consider the journal entries in the original record maintained by the District Court. However I find that the petitioner has failed to file in the Court of Appeal duly certified copies (as required by the Rules) of such journal entries and the order of the District Court which are material to the revision application.

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In any event, in order to decide whether the Court of Appeal had considered the question whether the documents (certified copies) which the petitioner had failed to file in the Court of Appeal were material to the application, this Court must necessarily peruse the application for revision filed in the Court of Appeal.

Although, item No.5 in the index filed by the petitioner-appellant in this Court refers to the petition and affidavit of the 1st defendant-petitioner filed in C.A. Application No.1319/2000 (Revision) being at pages 108 to 123, no copies of the said petition and affidavit filed in the revision application before the Court of Appeal have been filed along with the application for special leave to appeal as the papers filed in this Court do not go beyond page 88. The appellant has therefore failed to file duly certified copies of

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material documents, even in this instance (present appeal).

In the circumstances this Court is not in a position to ascertain whether the documents of which neither the originals nor duly certified copies were filed were documents which were material to the application in revision. 100

For the above mentioned reasons this Court is compelled to dismiss this appeal for failure to comply with Rule 3(1) (a) read with Rule 3 (1)(b). Vide the judgment in *Kanagasabapathy Shanmugavadivu v J.M.Kulathilake*.⁽¹⁾

In view of the above finding it is not necessary to look into the other question whether it is necessary to plead specifically special circumstances which warrant the exercise of the extraordinary revisionary jurisdiction of the Court of Appeal. There will be no costs.

BANDARANAYAKE, J. - I agree.

DE SILVA, J. - I agree.

Appeal dismissed.